RESPECTIVE RIGHTS OF INDIVIDUAL AND PARTNERSHIP CREDITORS IN BANKRUPTCY PROCEEDINGS.—A consideration of the principles governing the right of the creditors of a partner in a bankrupt firm to proceed against the assets of the firm was presented in the recent case of *In re Effinger* (D. Md. 1911) 184 Fed. 728. Since at common law the interest of each partner in the partnership assets was only a right to a share in the proceeds of the partnership property after all firm debts had been paid,[1] the individual creditors of one partner could proceed against the firm assets only after all claims due to the creditors of the partnership had been paid and the partnership dissolved.[2] On the other hand, since partnership debts were simply obligations of the individual partners,[3] firm creditors could proceed against the estate of any one of the partners even though sufficient joint assets existed to satisfy all partnership debts.[4] Though it would seem to be a corollary of this rule that firm creditors who have exhausted the firm assets should be allowed to prove in competition with the creditors of an individual partner against the assets of the invidual estate,[5] this question has been the subject of much discussion and disagreement. The courts have now generally adopted the view that since of course the firm creditors have priority in the distribution of firm assets, it is only equitable that the proceeds of the individual estates should be first available to individual creditors.[6] Illogical under this general rule, but more consistent than it with the original theory of a partnership, is the well established exception which recognizes the right of firm creditors, in the total absence of firm assets, to proceed directly against the individual estate,[7] and which, though limited at its inception to specific instances, has in some jurisdictions, by a misconception of its proper scope, been so extended as to affect the whole law of distribution.[8] The Federal Bankruptcy Act of 1898,[9] however, while adopting in terms the general rule above mentioned,[10] makes no reference to any exception thereto, and the fact that the existence of such an exception, based upon the common law theory of a partnership, is inconsistent with the doctrine of partnership entity laid down by that Act,[11] would indicate that it was intended to be abolished.[12]

In the case under discussion, the rights of an individual creditor of a bankrupt partner whose firm was also bankrupt, were further

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[1]Pennybacker *v.* Leary (1884) 65 Ia. 220; Darby *v.* Darby (1856) 3 Drew. 495; Burdick, Partnership (2nd ed.) 272.

[2]Eighth Nat. Bank of N. Y. *v.* Fitch (1872) 49 N. Y. 539; Fox *v.* Hambury (1776) Cowp. 445.

[3]Rice *v.* Shute (1770) 5 Burr. 2611.

[4]Hamsmith *v.* Espy (1862) 13 Ia. 439; Louden *v.* Ball (1883) 93 Ind. 232; Rice *v.* Shute *supra.*

[5]Camp *v.* Grant (1851) 21 Conn. 41; 4 COLUMBIA LAW REVIEW 595.

[6]Wilder *v.* Keeler (N. Y. 1832) 3 Paige 167; *Ex parte* Elton (1796) 3 Ves. Jr. 238; *Ex parte* Crowder (1715) 2 Vern. 706.

[7]*Ex parte* Pinkerton (1801) 6 Ves. Jr. 814; *Ex parte* Hill (1802) 2 B. & P. [N. R.] 191-*n.*

[8]*In re* Wilcox (1899) 94 Fed. 84.

[9]30 U. S. Statutes at Large 548.

[10]§ 5-*f.*

[11]8 COLUMBIA LAW REVIEW 391; *id.* 599.

[12]*In re* Janes (1904) 133 Fed. 912; *In re* Wilcox *supra.*

illustrated by the plaintiff's attempt to prove two claims against the firm. As regards the first of these, the partner had given a deed of trust of land belonging to him individually to a bank, as security for certain firm notes held by it. The bank sold the land, and not realizing from it the amount of the notes, proved the debt against the firm. A portion only of the *pro rata* dividend awarded to firm creditors was sufficient to satisfy the remainder of the bank's claim. It was held that the partner's estate should be subrogated to the bank's rights against the bankrupt firm, and that the plaintiff could therefore prove the debt. Although at common law it was impossible to allow proof of such a claim, for the reason that it amounted to permitting a partner to prove against himself in competition with his own creditors, the same result was nevertheless reached, on a theory of equitable subrogation, by granting an order setting aside from the firm assets an amount equal to the partner's claim, for the benefit of his individual creditors.[13] The Act of 1898, by making the partnership an entity,[14] and providing that "the court may permit the proof of the claim of the partnership estate against the individual estate and *vice versa*"[15] removed the technical difficulty of the common law, and the plaintiff's claim in the case under consideration was therefore properly allowed.[16] The plaintiff also sought to prove against the partnership in competition with partnership creditors a debt due from the firm to the estate of the individual partner, her debtor, and to receive a dividend thereon. It was held that although under the Statute this debt might be proved, the plaintiff could not receive a dividend until all claims of firm creditors had been satisfied in full. Of course at common law, for the reasons already mentioned, it was impossible even to allow proof of such a debt, but since in consequence of the Act of 1898 a partnership in such circumstances is now an entity distinct from the persons who compose it, and is therefore capable of becoming indebted to the individual partners, and since the Statute specifically provides that proof of such debts may be admitted, the construction put upon it by the court would seem to be an undue restriction of the legislative intent.[17] This conclusion is borne out by the consideration that such an interpretation destroys any effect of the Statute upon the substantial rights of the parties.

[13] *In re* Foot 12 N. B. R. 337; *In re* Hind (1887) L. R. Ir. 23 Ch. 217.

[14] 8 COLUMBIA LAW REVIEW 391.

[15] § 5-*g*.

[16] Burdick, Partnership (2nd ed.) 315.

[17] Burdick, Partnership (2nd ed.) 311; Lowell, Bankruptcy 361.